

City of San José, California

COUNCIL POLICY

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| TITLE PUBLIC PRIVATE COMPETITION POLICY | PAGE 1 of 18 | POLICY NUMBER 0-29 |
| EFFECTIVE DATE March 25, 1997 | REVISED DATE | |
| APPROVED BY COUNCIL ACTION | March 25, 1997, Item 9d | |

BACKGROUND

Over the years, the role of government as a monopolistic provider of public services has evolved into a role as a partner with the private and non-profit sectors in the delivery of public services. Government has chosen to involve others in service delivery due to limited resources, increased demands, and to the recognition that partnerships can leverage the quality and cost-effectiveness of services delivered to the public. At the same time, government continues to deliver many services competitively in-house and also retains the responsibility for core services that require a certain level of government control and accountability.

With an overarching goal of providing quality services to the public in a cost-effective manner, the City of San José mirrors government-wide trends in service delivery. In many cases, the City utilizes the private and non-profit sector to deliver City services, in accordance with existing Council Policy 0-24 which provides the context for the use of private contractors to deliver City services. In addition, City employees continue to provide high quality, cost-effective services and to use Continuous Improvement practices to enhance the efficiency and cost-effectiveness of City services. Recognizing the value and quality performance of City employees, Council Policy 0-24 sets forth a preference for using City employees to deliver City services.

In San José and other government agencies, the delivery of public services by private firms has resulted typically from private competition processes, in recognition of the fact that competition challenges private firms to provide better services at lower costs. More recently, governments have begun to apply the concept of competition more broadly to determine the most cost-effective method for delivering City services. In applying the concept more broadly, governments are subjecting many more services to a competition process in which they, themselves, are a competitor. The underlying assumptions of this public-private competition process are that government should be competitive in cost and quality with the private sector and that competition provides an incentive to enhance quality and lower costs. Assumptions of this public-private competition process are that government should be competitive in cost and quality with the private sector and that competition provides an incentive to enhance quality and lower costs.

To support the City's goal to deliver high quality services to the public in a cost-effective manner, San José seeks to merge Council Policy 0-24 into a new policy which applies the concept of competition more broadly, while retaining the preference for City employees to deliver City services and other applicable services.

PURPOSE

The purpose of this policy is to set forth the goals and guiding principles for the public-private competition process, criteria for selection of services for the competition process, and guidelines for conducting a competition process.

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POLICY

Overview

It is the policy of the City of San José to deliver quality services in the most cost-effective and efficient manner, within the context of other public policy goals and interests. The City shall use a public-private competition process where appropriate to determine the most competitive service delivery method.

The public-private competition process shall consist of a competitive assessment (1) of the in-house service selected for competition prior to issuing Requests for Proposals (RFP) (2) and a managed competition process (1) during which RFPs are issued. In the competitive assessment, City employees providing the service shall be given an opportunity to implement readily achievable improvements, if necessary, prior to the decision to pursue managed competition. The City shall continue to deliver the service in-house if it is deemed competitive according to the measures set forth later in this policy. The public-private competition process shall be carried out in accordance with the goals, guiding principles and criteria for selection set forth in this policy.

A glossary of key terms used in this policy is included in Attachment A.

Goals of Competition

The overall goal of the competition process is to ensure competitive service delivery, regardless of which delivery method is selected ultimately. The goals of the competition process shall reflect the breadth of qualities necessary to be competitive and the broader public interest, rather than simply focus on costs. Accordingly, the goals of the competition process are to:

- Increase responsiveness to customers through flexible service delivery.
- Reduce costs and/or avoid costs.
- Increase efficiencies of service delivery.
- Improve quality and levels of service provided.
- Encourage creativity and innovation in the delivery of services.
- Identify opportunities to leverage resources.
- Insure the City's mission and scope of services evolve with the changing environment.

Guiding Principles

The following principles shall guide the development and implementation of the public-private competition process.

Application of Competition Process: The premise of the public-private competition process is that competition in the marketplace produces value for customers and that either in-house or alternative service delivery methods may produce superior value for customers; therefore:

- The City may subject services that are currently provided in-house to the competition process.
- The City may subject services that are currently contracted out to the competition process.
- The City may also propose to provide services to other government agencies and, when it properly furthers an appropriate public purpose, to the private sector.

The City shall continue to utilize Continuous Improvement practices to enhance in-house service delivery outside of this process. The City shall also continue to use the current private competitive bid process in which the City is not competing and/or other alternative delivery methods without utilizing the public-private competition process, in situations such as when the benefits to the City of alternative service delivery are clear and/or delivery of the service is time-sensitive.

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Employee Partnerships: Fair and respectful treatment of employees shall be a cornerstone of the public-private competition process. To achieve the participation and acceptance of City employees, the City shall involve employees and unions (3) throughout the development and implementation of the public-private competition process. The City shall establish appropriate structures to ensure on-going participation of the employees and unions, including, but not limited to, labor and management teams.

Employment Stability: The City's commitment to employment stability for City employees affected by the public-private competition process shall be dependent upon employee and union commitment to flexible redistribution of resources, such as alternative career paths, broadened class specifications, and other measures to allow employees to assume greater and/or different responsibilities in a cost-effective manner.

Consistency with Other City Policies: The implementation of the competition process shall be consistent with other City policies and public policy goals, such as the minority and women business enterprise policy, prevailing wage policy, and community employment standards.

Level Playing Field: The competition process shall not favor or disadvantage any competitor in the process. The following principles shall apply:

- Request for Proposals (RFP) shall require competitors to provide prevailing wages (1) to their employees when it is deemed to be in the best interest of the City in obtaining the services requested.
- The RFP evaluation process shall include "Third Tier Review" of employment practices of private proposals, which includes review of employee benefits, employee complaint procedures and compliance with state and federal workplace standards.
- Methods for comparing costs shall be reasonable and unambiguous, shall ensure objectivity and integrity of the data, and shall ensure that all internal costs and gains associated with outside contracts are captured.
- The cost methodology used to calculate in-house service costs shall consider both direct and appropriate indirect costs of the service, such as those costs which would be avoided if the service is not provided in-house.
- Performance standards and quality measures shall be reasonable, quantifiable and unambiguous.

Internal Competitiveness: The City shall make every reasonable effort to enhance the ability of employees to compete successfully on an on-going basis. Actions to accomplish this objective shall include:

- Continuing to utilize Continuous Improvement practices to enhance in-house effectiveness and efficiency on an on-going basis.
- Providing competitiveness training to employees and unions, through a collaborative effort to define needs and select trainers. Training shall include components such as unit cost accounting, development of performance standards, benchmarking, preparation of Requests for Proposals, preparation of proposals, and general business principles.
- Involving internal support functions in competitiveness training and in competition processes for which their operations are a cost factor.
- Removing internal barriers to competitiveness, such as outdated or unnecessary procurement, legal, personnel, financial and other operational procedures.
- Providing alternative rewards (e.g., gainsharing, bonus programs, etc.) for successful employee efforts to reduce service costs and enhance service quality.

Competitive Assessment: Reflecting the preference for in-house service delivery, the competition process shall begin with a competitive assessment of the in-house service function prior to issuing requests for proposals. City employees providing the service shall be given an opportunity to develop and implement readily

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achievable efficiency and effectiveness improvements prior to the decision to pursue managed competition. Efficiency and effectiveness improvements shall include actions affecting both line staff and management, such as reducing management layers balanced with broadening class specifications to encompass other responsibilities.

In general, the City shall continue to deliver the service in-house in those cases where effectiveness and efficiency is equivalent to or greater than alternative means and where the potential savings for an outside service delivery are less than ten percent (10%) for the same level of service provided in-house, which is the general percentage used in business to account for the cost of contract administration and basic transition costs. Based on the recommendation of the competitive assessment team, the City Manager shall decide if the service will remain in-house or be subjected to managed competition. The decision to keep a service in-house shall be subject to City Council approval.

In situations involving currently contracted-out services and new services, a similar process will be used to determine if the City can deliver the service competitively. In this situation, the assessment will be based on the expected costs of the City providing the service rather than the actual costs.

Core Capacities and Resources: As part of the decision-making process, the City shall consider the level of core capacities, if any, which should be maintained within the City to enable the City to compete for service delivery in the future and/or to provide the service in the event of a contractor default, changed circumstances, or future non-competitive proposals. Measures to maintain core capacities may include retaining a portion of the service in-house and/or maintaining comparable skills in other units of the City. Where City funds are invested in equipment, real property or other capital assets, the City shall identify appropriate measures to ensure the ability to resume operations in the case of default, changed circumstances, or future non-competitive proposals.

Long-Term Competitiveness: To ensure the delivery of competitive services to the public over the long-term, the City shall avoid actions that result in the creation of a "private monopoly" in which only one private firm is likely to be viewed as a tenable provider of a particular service. If the creation of a private monopoly is likely, the City shall consider contracting out only part of the service or not contracting out any of the service. The City shall also monitor contract costs over the long-term to ensure on-going cost competitiveness.

Fair and Reasonable Process: During the competition process, the City shall maintain high ethical standards and avoid any actual or perceived conflict of interest in selecting service providers. The existing Code of Ethics, and when developed, the Code of Professional Conduct Policy shall apply.

CRITERIA FOR SELECTION OF SERVICES FOR COMPETITION

As part of the annual Administrative Work Plan, the City Manager shall identify services that will be subjected to the public-private competition process and the target dates for completing the public-private competition process. Services may include those currently provided in-house, those currently contracted out and new services. The City Manager shall solicit recommendations for services from the City Council, City Attorney, City Auditor, departments heads and the unions. The City Manager shall utilize the following criteria to select services to subject to the competition process:

1. **Nature of Service:** The extent to which a service is a self-contained service or a component of a larger service delivery system; is a core versus an ancillary service; can be subdivided geographically, with respect to volume of work, or duration of work; and can be measured in terms of quantity, quality, and other performance standards.
2. **Competitive Marketplace:** The availability of a competitive market for the service, in which providers have an interest in competing for the service and the ability to provide the service in terms of skill sets and resources.

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3. **Public Policy Acceptability:** The degree to which stakeholders accept the concept of competition and the possibility of alternative service delivery. Stakeholders can include the residents, users of the service, interest groups, public employee unions, current providers of the service, whether provided in-house or by an outside entity, and/or public officials.
4. **Cost Savings Potential:** The degree to which competition is likely to reduce or avoid future costs without compromising the quality of service.
5. **General and Enterprise Fund Enhancement:** The degree to which competition is likely to have a positive effect on the general fund or enterprise funds, as appropriate.
6. **Quality of Service:** The degree to which performance standards can be defined for the quality and level of service. The degree to which competition is likely to improve quality, customer satisfaction and/or responsiveness for the same or lower cost.
7. **Impact on Employees:** The potential effect on public employees currently providing the service and on the work force in general, with respect to issues such as work load, productivity, diversity, etc. availability of measures to mitigate negative impacts on employees.
8. **Legal Restrictions:** The extent to which local, state and federal laws, regulations, and funding guidelines restrict the method of service delivery or the competition process. The extent to which laws can be changed to accommodate competition and alternative service delivery.
9. **Risk:** The degree to which alternative service delivery presents risks to the City and the public in the case of defaults, breach of contracts, service interruption, costs overruns, and threats to the public safety, health and welfare.
10. **Resources:** The availability of government financial, human, technological, and capital assets to provide the service as compared to the resources of outside providers.
11. **Government Control:** The degree to which the City needs to exert control over the delivery of the service, can retain accountability for public funds, and has the ability to establish and maintain oversight of the service through adequate contract management.

APPROACH FOR PUBLIC-PRIVATE COMPETITION PROCESS

Following is the general approach for conducting the public-private competition process.

Competitive Assessment (1)

1. Select service for competition and identify target dates for completion in Administrative Work Plan.
2. Conduct competitive assessment of in-house service.
3. Implement effectiveness and efficiency improvements as needed.
4. Determine next step based on competitiveness of in-house service.

Managed Competition Process (if decision is made to continue the competition process)

1. Develop Request for Proposal (RFP)
2. Issue RFP
3. Conduct RFP process
4. Select provider
5. Monitor performance and costs

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EMPLOYMENT OPTIONS

Outside Contractor Employment

In the event that managed competition results in the outside delivery of a service previously provided in-house, the City shall facilitate the transition of employees to the successful contractor, if the employees elect to pursue this option. Actions to facilitate the transition to private employment with the successful contractor shall include, but not be limited to:

Requiring outside contractors that create new jobs or have currently existing job vacancies to deliver a City service to first consider displaced city employees for new jobs.

Providing one-time incentives to employees that accept employment offers from the successful contractor.

"No-Lay-Off" Provision

In the event that managed competition results in the outside delivery of a service previously provided in-house, the City shall provide any person displaced with other employment opportunities within the City to totally avoid the need for lay-offs. Appropriate lay-off procedures under the Memorandum of Agreement or Civil Service Rules shall apply. When the "bumping" procedures are used, City employment will be offered to affected employees.

"No Lay-Off" means no separation from City employment, unless the employee is hired by the successful contractor or chooses lay-off in-lieu of internal placement. If the employee remains with the City, the employee will not experience a reduction in current pay, although the employee may be transferred, assigned to a different classification, have salary Y-rated, or have other opportunities for employment. The no lay-off provision shall not apply in situations other than reductions in positions resulting from the public-private competition process.

In addition to the obligations in the Civil Service Rules and the City's Memoranda of Agreement, the City shall mitigate the impacts of the change in service delivery with actions including, but not limited to, the following:

- Notifying the unions, the Office of Employee Relations, and the Department of Human Resources (HRD) of the impending competition process.
- Committing to full partnerships with the employees and unions and meeting and conferring with unions as the sole representative of the employees, as appropriate in accordance with state statute.
- Banking appropriate vacancies to prepare for the impending competition.
- Identifying opportunities for moving displaced personnel into other City positions with comparable benefits and salary levels without compromising current job standards.
- Assisting employees in transition by offering training and cross-training.
- In the event an affected employee elects not to accept a position within the City, the employee shall separate from City employment within 30 days and the City shall provide outplacement support services for the employee for 60 days following separation from the City.

Meet and Confer Provision

For purposes of this policy, the meet and confer process shall incorporate the following principles:

- The process shall consider the competing interests of other stakeholders beyond the affected employees.
- Flexibility in redistribution of resources is necessary to guarantee employment protection.
- The process shall attempt to coordinate solutions city-wide, not just in one bargaining unit.

(1) See Attachment A "Glossary" for definition of term

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- (2) Requests for Qualifications (RFQs) and Requests for Information (RFI) may also be a part of the managed competition process.
- (3) "Unions" and "bargaining units" are used interchangeably throughout this Policy.

Attachments:

- A. Glossary of Terms
- B. Public-Private Competition Policy Implementation Plan
- C. Policy Development Teams